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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

WILLIAM ROBERT SUTTON, Plaintiff and Respondent, v. LOUIS ALLEN LIBERTY et al., Defendants and Appellants.	A151969 (San Mateo County Super. Ct. No. CIV524652)

A business arrangement between an attorney, a used car dealer and a software engineer went south. After a three-day bench trial, the court found attorney Louis Liberty liable to William Sutton and Larry Maloney for fraud and breach of contract. Liberty contends the verdict is not supported by substantial evidence and that the court erred when it failed to consider various affirmative defenses. His contentions are meritless, so we affirm.

BACKGROUND

The following evidence is described most favorably to the respondents in accord with the standard for substantial evidence review. (*SFPP v. Burlington N. & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

In 2010, Liberty learned that many car dealers sold used cars without disclosing known frame damage to the buyers. He proposed that he, Sutton and Maloney form a partnership to identify such sales and solicit lawsuits by defrauded buyers. Liberty would pursue the litigation and each of the partners would receive one-third of the net proceeds. As Maloney described the venture, "[a]fter a discussion of the possible rewards and the

risks, we all mutually agreed we would do a division of labor. All three of us being experts in our particular field; Lou being the legal expert; myself being the software expert; and Bill being the car expert. We decided to go one-third/one-third/one-third. We would split everything evenly, and I took that to be the whole partnership, you know, everything from, you know, ownership to revenue and what have you, so yes, we had a one-third agreement." Sutton also testified that Liberty promised him and Maloney one-third of "all proceeds that came from suing car dealers for frame damage." Liberty admitted that he, Maloney and Sutton were each to receive a third of "whatever proceeds came in."

In reliance on this promise, over the next six months Sutton and Maloney spent hundreds of hours creating software that could filter vast amounts of data and identify used cars knowingly sold to consumers with undisclosed frame damage. After they built a database and gave Liberty some number of case reports identifying suspect sales, Sutton told Liberty the partners should have a written contract. Liberty refused, and only then disclosed to Sutton and Maloney that attorneys may not legally share their fees or proceeds from settlements with non-lawyers. Sutton and Maloney were shocked and distraught.

Liberty assured them he was "a fair guy" and that he would "take care of" them. Instead of the three-way split as they had agreed, he proposed to pay Sutton and Maloney $3,500 for each case report. Sutton and Maloney hoped to salvage something from their efforts, so they agreed to this new arrangement. Thereafter they continued to build their databases and provide Liberty with case reports.

Liberty paid Sutton and Maloney $1,000 each (not the $3,500 they had agreed on) for one or two reports, but then made no further payments. Sutton and Maloney then incorporated as National Automobile Safety Council (NASC) "because [Liberty] wasn't paying us, number one, and we wanted to take control of our own destiny with these reports and cases. So we tried to get Mr. Liberty involved in that, but we just found out we couldn't be a partner with a lawyer, so Mr. Liberty said, go ahead and start your business, and that's what we did."

In October 2011 Maloney and Sutton prepared a written agreement memorializing their revised arrangement with Liberty and presented it to him along with invoices for 36 case reports they had given him. Liberty signed the agreement after demanding and obtaining a one-third reduction in the price per report, but he paid only four of the invoices.

In October 2013 Sutton, Maloney and NASC sued Liberty. As amended, the complaint alleged causes of action for fraud, breach of oral, written and implied contract, quantum meruit, unjust enrichment, promissory estoppel and unfair competition. After a 3-day bench trial, the court announced its statement of decision from the bench.

On the fraud claim, the court found "the evidence is overwhelming that the defendant did promise the plaintiffs that he would share one-third, one-third, one-third of his litigation[] proceeds related to this frame damaged car lawsuit venture they entered into. I found the plaintiffs to be credible. The defendant admitted at trial and in exhibits that that, in essence, was the agreement. He agreed to share, quote, proceeds with the plaintiffs, and he made no testimony or compelling argument that that term didn't mean litigation fees and/or settlements. There is no other way to interpret it, because there is no other way for this venture to make money. He also admitted at trial a quote was, 'I would pay when the cases settled. That was always the agreement.' And the Court interprets that as an acknowledgment that the original promise was to pay Mr. Sutton and Mr. Maloney via any proceeds of the litigation." The court observed that emails between the parties supported plaintiffs' claim that their compensation "was undeniably tied to the success of any litigation Mr. Liberty would bring."

The court also found Liberty knew his promise to share the proceeds of his lawsuits against dealers was illegal and that he had no intention of honoring it. "He has been an attorney for over 20 years, and anybody who has practiced for any amount of time knows you cannot share your litigation proceeds or your fees with non-attorneys; yet the defendant entered into exactly that agreement with the plaintiffs. He knew that was illegal because he used it as an excuse many months after the initial agreement to advise the plaintiffs that he wouldn't be paying them. Once the plaintiffs kept on Mr. Liberty

over and over to pay them, it wasn't until several months later that he said, oh guess what, this is actually illegal and I can't pay you that way. And I found the plaintiffs credible that they did not know that such an arrangement was illegal when they first entered into it with the defendant."

"I further find that the defendant, based on the evidence, didn't have any intention [of] following through on that original illegal promise. Number one, that's evidenced by the fact he never paid the plaintiffs anything related to any of the litigation. Then again, once the plaintiffs kept pressing the issue, he told them that the agreement was illegal. [¶] . . . [H]ad the defendant actually intended to honor that agreement, albeit an illegal one, he would have brought the plaintiffs in at some point and explained to them, look, the lawsuits aren't generating any money, and I just can't pay you despite our agreement. He didn't do that. Instead, he let them do an incredible amount of work, and when they finally wouldn't put up with nonpayment any longer, that's when he decided to tell them it was an illegal agreement and he wouldn't be paying them."

Liberty's promise induced plaintiffs to "spend enormous amounts of time and resources. They, together, built a software program. They compiled a database, and they generated reports. So all of that was reasonable reliance, and I find it credible that it took an enormous amount of work on their part." The same evidence also supported plaintiffs' quantum meruit claim.

When it considered the contract claims, the court found Liberty breached the written contract by failing to pay all but a few of the invoices presented to and initialed by him in October 2011. Despite some uncertainty with respect to the meaning of "goods" as used in the written contract, the court reasoned that "[a]t the time of the signing of the contract, those invoices were undisputed, presented, and signed off on. So those were the goods that were being presented and that the defendant agreed to pay for."

The court rejected Liberty's claim that plaintiffs' profits from the venture and the value of the database they created should be offset against their damages. First, there was insufficient evidence to establish the amount of such profits, if any. Second, plaintiffs' damage claim was based on the reports they delivered and Liberty failed to pay for, "and

there is no offset with respect to that particular category of damages." The court found no evidence to support Liberty's affirmative defense of unclean hands.

Valuing the unpaid reports at the contract price of $2,333.33 each, the court awarded the individual plaintiffs $235,663.33 in fraud damages for 101 outstanding invoices for reports that were not subject to the breach of contract claim. NASC, the signatory to the written contract, was awarded $74,666.56 for 32 unpaid reports covered by the contract plus $37,926.54 in prejudgment interest. Plaintiffs withdrew their remaining causes of action and claim for attorneys' fees, which were dismissed. Liberty filed this timely appeal from the judgment.

DISCUSSION

Liberty asserts the fraud verdict must be reversed because the evidence is insufficient to support the court's findings that (1) he promised to share his fees with Sutton and Maloney; (2) Sutton and Maloney justifiably and detrimentally relied on that promise; (3) Liberty intended to defraud them; and (4) they were harmed thereby. His arguments do not withstand analysis under the substantial evidence standard of review.

"In resolving the issue of the sufficiency of the evidence, all factual matters must be viewed most favorably to the prevailing party and in support of the judgment. [Citation.] When there are two or more inferences which can be reasonably deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. [Citations.] The power of an appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the [trier of fact]. [Citation.] 'Substantial evidence means such evidence as a reasonable fact trier might accept as adequate to support a conclusion; evidence which has ponderable legal significance, which is reasonable in nature, credible and of solid value.' " (*Jimenez v. Pacific Western Construction Co*. (1986) 185 Cal.App.3d 102, 111-112 (*Jimenez*).)

Ample evidence supports each of the court's findings. Sutton and Maloney testified that Liberty promised to pay them one-third of the proceeds from their venture, and that the primary object of the venture was to pursue legal claims against car dealers.

When Liberty later disclosed it was illegal for him to do so—a fact any attorney would have known from the outset—he promised to pay them for each case report. Both plaintiffs testified to the enormous amount of time and effort they expended in reliance on those promises. The trial court reasonably believed their testimony. We may not disturb its findings. " 'With rhythmic regularity it is necessary for us to say that where the findings are attacked for insufficiency of the evidence, our power begins and ends with a determination as to whether there is *any* substantial evidence to support them; that we have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.' " (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §365 pp. 423-424, quoting *Overton v. Vita-Food Corp.* (1949) 94 Cal.App.2d 367, 370.) Such is the case here. Substantial evidence supports the court's findings, so Liberty's attempt to construct a contrary narrative from the record is unavailing.

Liberty contends the quantum meruit verdict is unsupported by any evidence that he benefitted from Sutton and Maloney's work (see *Port Medical Wellness, Inc. v. Connecticut General Life Insurance Company* (2018) 24 Cal.App.5th 153, 180 [benefit to defendant is an element of quantum meruit]) and is barred by the statute of limitations. These contentions are immaterial, because plaintiffs withdrew the cause of action and the court dismissed it. Liberty also argues the breach of contract verdict is unsupported by substantial evidence because the written agreement was between himself and NASC, and there is no evidence that NASC, as opposed to the individual plaintiffs, prepared any case reports. This is nonsense. It does not matter who prepared the reports. Liberty signed a contract promising to pay NASC for them, and he did not. That was substantial evidence of breach.

Finally, Liberty asserts the court failed to consider his affirmative defenses of offset and unclean hands. This argument is premised on a brief snippet of testimony that Liberty asserts proves Sutton and Maloney shut him out of their lucrative joint venture and co-opted his work product without compensation. "It is too well settled in this state

to require the citation of authorities that where an appellant alleges error it is incumbent upon him to show it affirmatively, and that we will not presume that a trial judge failed to do what the law required him to do, but, in the absence of a showing to the contrary, will presume that he did what he was directed by statute to do." (*People v. Russell* (1909) 156 Cal. 450, 457.) Here, nothing in the record indicates the court failed to consider Liberty's affirmative defenses or evidence he claims supported them. To the contrary, after listening to all three of the them testify, the court believed Sutton and Maloney, disbelieved Liberty, and specifically found there was no offset and no evidence of unclean hands. That was its prerogative. (See *Jimenez, supra*, 185 Cal.App.3d at pp. 111-112.)

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

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Siggins, P.J.

WE CONCUR:

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Fujisaki, J.

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Wiseman, J.[*]

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[*] Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.